

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4109 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RUPSINH PRABHATSINH CHAUHAN & ANR

Versus

THE STATE OF GUJRAT & ANR

Appearance:

MR AJ PATEL for Petitioners

SERVED for Respondent No. 2, 3, 4, 5

Mr A.G.Uraizee for respodent No.1.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 26/04/96

ORAL JUDGEMENT

Leave to amend the prayer and the title and to convert this petition also into one under Article 226 of the Constitution of India.

2. The petitioners have challenged the judgment and order dated 11.12.93 passed by the Deputy Secretary (Appeals), Revenue Department, Ahmedabad in revision

application No.5 of 1993 whereby the revision filed by the petitioners came to be rejected confirming the order of the Collector, Godhra in revision application No.23/92 dated 31.3.93 and also confirming the order of the Assistant Collector recorded on 7.11.92 in case No.62 of 1991, by filing this petition under Article 226/227 of the Constitution of India.

3. The learned counsel Mr Patel appearing for the petitioners has raised the following two contentions:

- (1) That the proceedings could not have been initiated after a lapse of period of about 12 years from the date of transaction;
- (2) That the authorities below should not have merely relied on the entry in the revenue record about the new tenurability and should have found out the source.

The aforesaid two contentions are resisted and countenanced by the learned Assistant Government Pleader Mr Uraizee, who has fully supported the impugned orders.

4. The petitioners are the purchasers of land bearing block No.51 admeasuring 1 hectre 61 gunthas and 91 sq. mtrs. of village Tejpur, Taluka Halol, Dist: Panchmahals from respondents Nos. 2 to 5 by a registered sale deed and accordingly entry No.200 was effected in record of rights on 14.7.80.

5. The Assistant Collector, Godhra, issued a notice dated 28.1.92 calling upon the petitioners to show cause as to why the land in question should not be forfeited to the Government as there was breach of new tenure condition. The said proceedings were numbered as Case No.62 of 1991 before the Assistant Collector, Godhra. The petitioners, in response to the show cause notice, appeared and resisted the same and, inter alia, contended that they had purchased the land in question in the year 1980 for Rs.5,000/- and that they have spent an amount of Rs.20,000/- for the improvement of the land. The Assistant Collector, did not agree with the petitioners' contentions and passed the impugned order dated 7.11.92 and held that there was breach of new tenure condition and, therefore, the land was ordered to be forfeited to the Government.

6. Being aggrieved by the said order of the Assistant Collector, Godhra, the petitioners preferred revision application No.23/92 before the Collector,

Panchmahals, at Godhra, who passed order dated 31.3.93 dismissing the said revision application and confirmed the order of the Assistant Collector. Subsequently, the petitioners also filed revision application No.5/93 before the State Government and raised the same contentions. The revision before the Government also came to be rejected on 11.12.93 confirming the order of the Collector and the Assistant Collector. Hence this petition under Article 226/227 of the Constitution of India.

7. The aforesaid two contentions raised on behalf of the petitioners are reiterated and repeated before this Court which have no force and legal legs to stand. Three authorities below have concurrently and consistently found that there was breach of new tenure condition and therefore the sale transaction and resultant entry in the record of rights are not legal. New tenurability means the land is impartible and non-transferable. The land in dispute is an agricultural property. New tenure condition prohibits transfer of land without permission. It is very clear from the revenue record that in the record of rights, entry with regard to new tenure is made since 1957. It is not true to contend that the revenue authorities is bound to find out the source from which the entry is founded upon. The petitioners have not been able to satisfy this Court that the impugned transaction of sale and the resultant recording of impugned entry are legal and valid. The aforesaid two contentions have been repeated here. The same contentions raised before the three authorities below have been rightly rejected concurrently and consistently. When the transaction is illegal and when the entry is illegal, it is non est and void for all purposes and the same can be questioned by anybody in any proceedings at any point of time. That is the proposition of law. The Apex Court in *State of Orissa v. Brindavan Sharma*, 1995 Supp. (3) SCC 249 has also laid down the same proposition of law. It is held in the said decision of the Apex Court that any action without jurisdiction or any illegal order is non est and is void and its validity can be questioned at any stage or invalidity can be pleaded in any proceedings. Therefore, the contention that there is delay of 12 years is of no avail. The second contention as observed hereinbefore that there should be a source on the basis on which the entry must be traced by the revenue authority is also not sustainable.

8. Lastly, it was argued that in view of the Government resolution dated 16.3.82 with regard to breach of conditions of new tenure, the same could be

regularised. It is also contended on the basis of the said resolution of the Government that mere mention of 'new tenure' does not necessarily mean that the land is impartible and non-transferrable. The aforesaid Government resolution is dated 16.3.82. There is nothing on record to show that this resolution was retrospectively applicable. The transaction in question and the resultant entry came to be made in 1980. Therefore, the aforesaid resolution also will not come to the rescue of the petitioners. Learned counsel Mr Patel appearing for the petitioners will not be able to capitalise out of the said resolution. Therefore, the last contention is also rejected. It is also a settled proposition of law that the jurisdictional sweep of this Court in a petition under Article 226/227 of the Constitution is very much circumscribed. This Court cannot be converted into an appellate forum. The powers of this Court under Article 226/227 are in the nature of supervisory. It may also be stated that it is not the decision, but the decision making process which could be impugned in the writ petition. Applying this celebrated and settled proposition of law, there is no case warranting interference of this Court in this petition under Article 226/227 of the Constitution exercising extra-ordinary, discretionary, plenary, equitable powers in favour of a person whose right is based on non-est and illegal transaction.

9. Having regard to the aforesaid facts and circumstances and the aforesaid settled proposition of law, this petition deserves to be rejected. Accordingly, it is rejected with costs. Rule discharged.

10. At this stage, the learned counsel Mr Patel prays for continuance of interim relief so as to enable the petitioners to pursue remedy available in law. Having regard to the facts and circumstances, the interim relief is ordered to continue for a further period of six weeks from today.
